

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0267P
Sales Tax
For the Years 1995-2001

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ISSUE

I. Tax Administration- Ten Per Cent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer manufactures and sells leotards and warm-up suits used to participate in competitive gymnastics. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales tax, interest, and penalty. The taxpayer protested the imposition of the ten percent (10%) negligence penalty. A hearing was held by telephone.

I. Tax Administration- Ten Percent (10%) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

When it started its business, the taxpayer sold its wares in Indiana by mail order. All sales in Indiana were in interstate commerce and not subject to the Indiana sales tax. In November, 1995, the taxpayer changed its business practices by adding sales representatives in Indiana.

These representatives established a nexus for the taxpayer in Indiana. At that time, the Indiana sales became subject to the Indiana sales tax. In 2001 the taxpayer reviewed its practices and determined that it owed sales tax on the Indiana sales after the establishment of its nexus with Indiana. Therefore the taxpayer filed as a retail merchant with the department. An audit determined the amount of Indiana sales subject to the sales tax from November, 1995 and 2001. After the audit, the department assessed the negligence penalty against the taxpayer. The taxpayer contends that since it voluntarily reassessed its practices, determined that it owed the tax, and registered with the department, it should not be assessed the negligence penalty. The department disagrees. For six years the taxpayer ignored the department's instructions concerning the effect of the Indiana salesmen on the taxpayer's Indiana sales tax liability. The reasonably prudent taxpayer would attempt to assess the effect of the Indiana salesmen on Indiana tax liabilities at the time the salesmen were established in the state rather than waiting six years. The taxpayer's inattention to its duty to determine its proper tax liability and failure to follow the department's instructions for six years constitutes negligence.

FINDING

The taxpayer's protest is denied.